

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§3.11-3.13, concerning access to official records.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§3.11-3.13 are adopted and are authorized for filing with the Office of Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

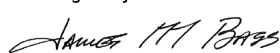
Submitted and reviewed by:

DocuSigned by:

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General Counsel

Recommended by:

DocuSigned by:

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Executive Director

115744 May 28 2020

Minute	Date
Number	Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §§3.11-3.13, concerning access to official records. The amendments to §§3.11-3.13 are adopted without changes to the proposed text as published in the March 13, 2020 issue of the *Texas Register* (45 TexReg 1844) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §3.11, Definitions, delete the definitions of "political subdivision" and "special district," as these definitions are not used in the subchapter. Amendments to §3.11 also modify the definition of "written request" to update the definition to comply with the changes made by this rulemaking in §3.12 and to remove the reference to facsimile transmission.

Amendments to §3.12, Public Access, modify the manner in which a request for records under Government Code, Chapter 552, the Texas public information law, may be made to the department. Government Code, §552.234, which was added by S. B. No. 944, Acts of the 86th Legislature, Regular Session, provides that a written request for public information must be made by United States mail, email, hand delivery, or another appropriate method approved by the agency's governing body and allows a governmental body to designate addresses for receipt of open records requests. The amendments provide that a person may send a request by United States mail or by hand delivery to any

1 district or division office. For email requests, the amended
2 section continues to authorize email requests through the
3 department's Internet website and adds a specified email address
4 as another option. Requests will no longer be accepted by
5 facsimile transmission.

6
7 Amendments to §3.13, Waiver of Fees for Certain Copies of
8 Official Records, to provide clarity concerning the waiver of
9 fees for official records. Subsection (a) currently requires the
10 department to provide without charge records that are relevant
11 to a filed internal employee grievance, with the General Counsel
12 of the department determining which records are relevant. The
13 amendments clarify that on request, the department will provide
14 without charge to an official party to an internal complaint
15 relating to discrimination, harassment, retaliation, or
16 unprofessional conduct copies of documents that are relevant to
17 that complaint. The amendments also provide that the division
18 responsible for performing the complaint investigation, rather
19 than the department's general counsel, will determine which
20 records are relevant because that division will have all
21 information relating to the investigation and can make the
22 determination more efficiently and economically.

23
24 COMMENTS

25 No comments concerning the proposed amendments were received.

26
27 STATUTORY AUTHORITY

1 The amendments are adopted under Transportation Code, §201.101,
2 which provides the Texas Transportation Commission with the
3 authority to establish rules for the conduct of the work of the
4 department and Government Code, §552.234, which authorizes the
5 commission to approve one or more methods of delivery of
6 requests for public information in addition to those required by
7 statute and to designate one electronic mail address for
8 receiving requests for public information.

9
10 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
11 Government Code, §552.234.

SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

§3.11. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) District engineer--The chief administrative officer of a district of the department.

(4) Division director--The chief administrative officer of a division or office of the department.

~~[(5) Political subdivision--A county, municipality, local board, or other governmental body of this state having authority to provide a public service.]~~

~~[(6) Special district--A political subdivision of the state established to provide a single public service within a specific geographical area.]~~

(5)[(7)] Written request--A request made in writing, including a request made by electronic means ~~[mail, electronic media, and facsimile transmission]~~.

§3.12. Public Access.

(a) Request for records. A person seeking records under Government Code, Chapter 552, Public Information, must ~~[public information shall]~~ submit a request in writing to the department. The department will accept only a written request that is delivered to the officer for public information or a

person designated by that officer and that is made using one of the following methods:

(1) United States mail to any district or division office;

(2) hand delivery to any district or division office;

(3) electronic mail to TxDOT_ORR@txdot.gov; or

(4) electronic submission through the open records portal on the department's Internet website, located at <http://www.txdot.gov>

~~[(1) A request made by other than electronic mail may be submitted to:]~~

~~[(A) the department's General Counsel;]~~

~~[(B) the department's officer for public information; or]~~

~~[(C) the district engineer or division director of the district or division responsible for the information.]~~

~~[(2) A request made by electronic mail shall be sent via the department's Internet site, located at <http://www.txdot.gov>].~~

(b) Production of records. Except as provided in subsections (d), (e), and (f) of this section, the department will provide copies or promptly produce official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact in writing

NOTE: Additions underlined

Deletions in []

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Exhibit B

1 within 10 business days after the date the information is
2 requested to the applicant and specify a date within a
3 reasonable time when the record will be available for inspection
4 or duplication.

5 (c) Examination of information.

6 (1) A person requesting to examine official records in
7 the offices of the department must complete the examination
8 without disrupting the normal operations of the department and
9 not later than the 10th day after the date the records are made
10 available to the person. Upon written request, the department
11 will extend the examination period by increments of 10 days, not
12 to exceed a total of 30 days.

13 (2) The inspection of records may be interrupted by
14 the department if the records are needed for use by the
15 department. The period of interruption will not be charged
16 against the requestor's 10-day period to examine the records.

17 (3) A person may not remove an original copy of an
18 official department record from the offices of the department.

19 (d) Request for opinion. If the department considers that
20 requested records fall within an exception under the Government
21 Code, and that the records should be withheld, the department
22 will ask for a decision from the attorney general about whether
23 the records are within that exception if there has not been a
24 previous determination about whether the records fall within one
25 of the exceptions. The request for a decision from the attorney

1 general will be made by the 10th business day after the date of
2 receiving the written request.

3 (e) Certified records. In accordance with Transportation
4 Code, §201.501, the following officials shall serve as the
5 executive director's authorized representatives for the purpose
6 of certifying official department records.

7 (1) The department's chief clerk to the commission or
8 assistant chief clerk may certify commission minute orders. The
9 executive director may delegate certification authority to other
10 officials to assure sufficient availability of authorized
11 certifying officials.

12 (2) Other official records of the department may be
13 certified by the district engineer, division director, or other
14 department official having official custody of the records. A
15 district engineer or division director may delegate
16 certification authority to other officials to assure sufficient
17 availability of authorized certifying officials.

18 (f) Correction of Information. An individual may request
19 the correction of information about that individual in the
20 following manner:

21 (1) A request to correct information may be submitted
22 in writing or through the department's Internet site, located at
23 <http://www.txdot.gov>. The request must be directed to the
24 district engineer or division director of the district or
25 division responsible for the information.

1 (2) The request must include the individual's name,
2 address, and telephone number.

3 (3) The request must identify the record to be
4 corrected with as much specificity as reasonably possible. The
5 department will not process requests that do not identify
6 particular records.

7 (4) This subsection applies only to a request to
8 correct information that relates directly to an individual,
9 including the individual's name, address, telephone number, and
10 similar information.

11 (5) The department may contact the individual or take
12 other steps as necessary to obtain additional information with
13 regard to the record to be corrected, the nature of the
14 correction to be made, the reasons that the current information
15 maintained by the department is incorrect, or other relevant
16 matters.

17 (6) The district engineer or division director
18 responsible for the information will determine if the current
19 information maintained by the department is incorrect.

20 (A) If the current information maintained by the
21 department is determined to be incorrect, the department's
22 records will be corrected. The district engineer or division
23 director responsible for the information will determine the
24 manner in which the correction will be made.

1 (B) If the current information maintained by the
2 department is determined to be correct, the request for
3 correction will be noted in connection with the relevant record.

4 (C) The department may refuse to alter records
5 that were correct at the time they were first prepared, but are
6 no longer correct. If the department refuses to alter a record
7 that was correct at the time it was first prepared, but is no
8 longer correct, the request for correction will be noted in
9 connection with the relevant record.

10 (7) This subsection does not authorize the
11 cancellation, issuance, or alteration of any official record,
12 including a title, a license, or a permit. Application for a
13 new official record must be made in the manner required by law.

14
15 §3.13. Waiver of Fees for Certain Copies of Official Records.

16 (a) On request, [~~When an employee files an internal~~
17 ~~employee grievance,~~] the department will provide copies of
18 relevant records free of charge to an official party to an
19 internal employee complaint regarding discrimination,
20 harassment, retaliation, or unprofessional conduct [~~the~~
21 ~~proceeding~~]. The division responsible for performing the
22 complaint investigation [~~department's General Counsel~~] will
23 determine which records are relevant under this subsection.

24 (b) The department may waive or reduce the fees charged for
25 copies of records if the executive director or the district
26 engineer or division director with jurisdiction over the records

1 determines a waiver to be in the public interest because
2 providing the records primarily benefits the general public or
3 because the records can be produced at a minimal expense to the
4 public.